

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

VIRGIL TALLEY, §
v. § Civil Action No. 4:23-cv-180-SDJ-KPJ
PEPO TSVETANOV, *et al.* §
§
§

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On July 26, 2024, the Magistrate Judge entered proposed findings of fact and a recommendation (the “Report”), (Dkt. #25), that Plaintiff Virgil Talley’s (“Plaintiff”) Complaint (Dkt. #1) be dismissed without prejudice under 28 U.S.C. § 1915(e)(2)(B), Defendant Pepo Tsvetanov’s (“Defendant”) Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(1), (2), (5) and (6) (the “Motion to Dismiss”), (Dkt. #19) be granted in part and denied in part, and Plaintiff’s Motion for Summary Judgment FRCVP-Rule 56 (the “Motion for Summary Judgment”) (Dkt. #21) be denied without prejudice.

Having received the Report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and

conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's Report as the findings and conclusions of the Court.¹

IT IS ORDERED that the Complaint (Dkt. #1) is **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1915(e)(2)(B).

IT IS FURTHER ORDERED that the Motion to Dismiss (Dkt. #19) is **GRANTED IN PART** and **DENIED IN PART**. The Motion to Dismiss (Dkt. #19) is granted to the extent it seeks to dismiss the Complaint (Dkt. #1) pursuant to Rule 12(b)(2) and to quash service pursuant to Rule 12(b)(5) and denied as moot to the extent it seeks to dismiss the Complaint (Dkt. #1) pursuant to Rule 12(b)(1) and 12(b)(6).

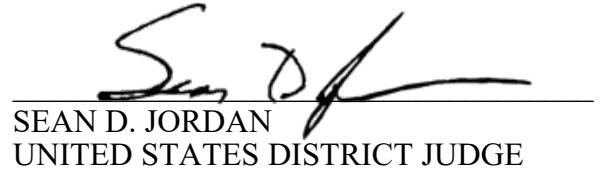
IT IS FURTHER ORDERED that the Motion for Summary Judgment (Dkt. #21) is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff be given leave to file an amended complaint rectifying the deficiencies identified in the Report (Dkt. #25) no later than fourteen (14) days after the entry of this Memorandum Adopting Report and Recommendation, if any. **If Plaintiff fails to timely file an amended complaint, his claims will be subject to dismissal under Federal Rule of Civil Procedure 41.**

¹ The Court does not adopt the incorrect docket citation dates on page 2 of the Magistrate Judge's Report and acknowledges they should read "October 2023", "October 17, 2023," and "November 3, 2023," respectively.

IT IS FURTHER ORDERED that the original attempt at service on Tsvetanov be **QUASHED**, and Plaintiff be given **thirty (30) days** from the date the amended complaint is filed to properly serve Tsvetanov.

So ORDERED and SIGNED this 27th day of September, 2024.



SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE